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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1999

Addendum

KAZAKHSTAN

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Introduction

1. This report is submitted in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which entered into force for the Republic of Kazakhstan on 26 June 1998 following its ratification. It has been compiled in accordance with the guidelines on layout and content of initial reports submitted by States parties pursuant to article 19, paragraph 1, of the Convention and the amendments to the general guidelines of 26 April 1991, adopted at the 82nd meeting of the United Nations Committee against Torture.

2. The report covers the period 1998-1999.

3. It was prepared by the Human Rights Commission attached to the Office of the President of the Republic of Kazakhstan in cooperation with the Ministry of Justice, the Ministry of Internal Affairs, the Office of the Procurator-General and the National Security Committee.

I. GENERAL INFORMATION

4. A complex process of building up a democratic and social State subject to the rule of law is proceeding in the Republic of Kazakhstan in accordance with the policy outlined in its 1995 Constitution.

5. Kazakhstan, as a State Member of the United Nations, recognizes that the provisions of the Charter of the United Nations take precedence over those of other international agreements. It is fully committed to the implementation of the provisions of the Charter of the United Nations and their incorporation in national legislation. A significant feature of the country's Constitution is that it embodies the widest possible range of civil, political, economic, social and cultural rights of citizens, reflecting generally recognized international human rights standards and their classification in accordance with the Universal Declaration of Human Rights. This is clear from the fact that 30 of the 98 articles comprising the Constitution proclaim the rights, freedoms and obligations of the individual. The basis for the inclusion of these articles in the Constitution is the priority given to the life, rights and freedoms of the individual.

6. Article 14 of the Constitution states that everyone is equal before the law and that "No one shall be subject to any discrimination for reasons of origin, social status, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances". On this basis, Kazakhstan's criminal legislation provides for punishment in cases of discrimination and the use of torture.

7. The Constitution not only describes the various functions of the legislature, executive and judiciary but also covers basic issues connected with the reform of the law enforcement system. The new Criminal Code, Code of Criminal Procedure and Code for the Execution of Criminal

Penalties adopted in 1997 are based on the rule of law, justice, the equality of citizens before the law, personal responsibility, humanism and the individualization of criminal responsibility and punishment.

8. According to article 17 of the Constitution, which carries the greatest legal force and is directly applicable throughout the country, "No one must be subject to torture, violence or other treatment and punishment that is cruel or humiliating to human dignity".

9. This constitutional provision is elaborated upon in the Criminal Code, the Code of Criminal Procedure and the Code for the Execution of Criminal Penalties. These Codes embody a sufficient number of norms that brand all acts of torture as offences and forbid their use in criminal proceedings as well as in the course of a sentence being served by a prisoner.

10. The Criminal Code is consistent in dealing with the inadmissibility of torture since its provisions provide for the criminal responsibility and punishment of officials and bodies in charge of criminal proceedings who violate due process and the execution of punishment, including the infliction of torture, and other cruel or degrading treatment or punishment.

11. The use of torture is regarded as an aggravating circumstance in respect of criminal responsibility and punishment.

12. A direct reference is made to the term "torture" in article 107, entitled "Systematic or brutal violence", and article 347, entitled "Coercion to testify", of the Criminal Code. Article 107 states that "The infliction of physical or mental suffering by systematic beatings or other violent methods including the use of torture shall be punishable by restriction of liberty for a period of up to five years or deprivation of liberty for a period of from three to seven years." Article 347 states that "Coercion of a suspect, accused person, injured party or witness to testify or of an expert to present his conclusions by means of threats, blackmail or other unlawful methods on the part of an investigator or the person conducting an initial inquiry, accompanied by the use of violence, bullying or torture shall be punishable by deprivation of freedom for a period of from three to eight years." On the basis of this article, the personnel of law enforcement agencies are held criminally responsible for the use of torture or for participating in its use either actively or by failure to act.

13. The definition of the term "torture" given in the Commentary on the Criminal Code of the Republic of Kazakhstan and constituting the official interpretation of the Code reflects the provisions of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: "Torture is regarded as constituting acts that cause physical or mental suffering such as beating, twisting of the wrists, the use of painful methods, inflicting burns on the body, the prolonged and systematic infliction of pain, etc." (article 347 of the Criminal Code). In this connection, article 107 of the Commentary states that the term "Systematic or brutal violence involving torture covers cases when, in order to cause physical or mental suffering, particularly sophisticated methods are employed to affect the human body. These include the use of electric shocks, red-hot irons, fire, etc.". However, in accordance with

article 4, paragraph 3, of the Constitution, "International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty requires the promulgation of a law." On the basis of these provisions, the definition of the term torture given in the Constitution can be officially used for purposes of law enforcement.

14. According to the Convention, the term torture implies its use only by a public official or another person acting in an official capacity with his consent or acquiescence, whereas under Kazakhstan's criminal legislation not only public officials but also other persons using torture in order to commit an unlawful act are held criminally responsible for their acts (article 107 of the Criminal Code).

15. In view of the fact that the Committee against Torture has expressed the view that torture should be defined as a separate offence in the domestic legislation of States parties, Kazakh jurists consider that they should explore the possibility of introducing a separate article in chapter 13 of the Criminal Code, entitled "Offences against the interests of the civil service", with a view to holding persons engaging in torture and other cruel, inhuman or degrading treatment or punishment responsible for their acts.

16. There is a particularly close link between the Criminal Code and the Code of Criminal Procedure, which governs the activities of bodies responsible for criminal proceedings.

17. The activities inherent in and the principles of criminal proceedings place the bodies responsible for such proceedings under a duty to protect the rights and freedoms of citizens in the course of their activities.

18. The Constitution and the international agreements ratified by Kazakhstan are an integral part of legislation covering criminal procedure and must be strictly complied with in the course of criminal proceedings.

19. The Code for the Execution of Criminal Penalties has considerably extended the rights of persons who have been convicted and increased the effectiveness of the social and legal protection available to them.

20. The State's policy in this area as reflected in national legislation on the subject completely excludes the use of torture and other cruel, inhuman or degrading treatment or punishment from the armoury of methods used to combat crime.

21. Under Kazakhstan's national legislation, matters covered by the Convention are dealt with by the Supreme Court and the Office of the Procurator-General. Various internal affairs bodies are also competent to consider questions that arise in connection with the functioning of the Convention (mainly the Committee on the Execution of Criminal Penalties attached to the Ministry of Internal Affairs). Citizens are entitled to appeal to these bodies, as well as to the Human Rights Commission attached to the Office of the President, in the event that they are subjected to torture or other cruel, inhuman or degrading treatment or punishment.

II. INFORMATION IN RESPECT OF EACH ARTICLE OF PART I OF THE CONVENTION

Article 2

22. The Republic of Kazakhstan recently adopted additional legislation to prevent the commission of acts of torture in its territory. The regulatory acts adopted by Kazakhstan contain a number of important provisions aimed at the more forceful application of the norms set out in the Convention. These include:

(a) Act of 30 March 1999 on procedures and conditions for holding persons suspected or accused of a crime in custody;

(b) Act of 13 July 1999 granting amnesty in connection with the Year of solidarity between successive generations;

(c) Decree of 21 December 1995 of the President of the Republic of Kazakhstan having the force of law concerning the internal affairs bodies of the Republic of Kazakhstan;

(d) Decision of 1 October 1996 of the Government of the Republic of Kazakhstan on measures to harmonize the activities of organs responsible for the execution of criminal penalties and places of pre-trial detention in the Republic of Kazakhstan;

(e) Order No. 630 of 14 December 1999 of the Ministry of Internal Affairs confirming the in-house regulations of the remand centres of the Ministry of Internal Affairs of the Republic of Kazakhstan.

23. The above acts, together with the Criminal Code, the Code of Criminal Procedure and the Code for the Execution of Criminal Penalties, constitute the basic regulatory instruments that establish criminal responsibility for the use of torture and other cruel, inhuman or degrading treatment or punishment.

24. An order from a superior or State official cannot, under Kazakhstan's legislation, be invoked to justify torture.

25. The criminal responsibility of State officials for acts beyond their immediate official duties is specifically regulated by the provisions of the Criminal Code. Action ultra vires is defined as an offence in article 308 of the Criminal Code:

> "Action ultra vires - namely, acts performed by an official that clearly exceed his rights and powers and that constitute an important violation of the rights and legitimate interests of citizens or organizations or of the lawful interests of society or the State - by a person occupying a responsible official position and having serious implications shall be punished by deprivation of liberty for a period of up to 10 years and deprivation of the right to occupy certain positions or engage in certain activities for a period of up to 3 years".

26. Action ultra vires constitutes a special form of the abuse of official position. The difference between this type of offence and other forms of official misconduct is that action ultra vires is clearly beyond a person's powers and authority.

27. Criminal responsibility for the use of torture and other cruel, inhuman or degrading treatment or punishment is established not only in peacetime but also in times of war. Article 159, paragraph 1, of the Criminal Code states that:

> "The cruel treatment of prisoners of war or civilians, the deportation of the civilian population, the pillaging of national property in occupied territory, the use during an armed conflict of means and methods prohibited by an international agreement with the Republic of Kazakhstan shall be punishable by deprivation of liberty for a period of up to 12 years".

28. This provision is based on the Hague Conventions on Land Warfare of 1899 and 1907 and on other international instruments prohibiting the use of means and methods of waging warfare that cause unjustified suffering to the participants in an armed conflict and to the peaceful population.

29. Under Kazakhstan's legislation, the order of a superior officer or a public authority cannot be used to justify torture.

30. Kazakhstan's legislation contains no reservations concerning the possibility of using torture in exceptional circumstances.

Article 3

31. Article 11 of the Constitution states that:

> "1. A citizen of the Republic of Kazakhstan may not be extradited to a foreign State unless otherwise stipulated by international treaties of the Republic.
>
> "2. The Republic shall guarantee its citizens protection and patronage outside its boundaries".

32. Article 8 of the Criminal Code accordingly stipulates:

> "1. Citizens of the Republic of Kazakhstan who have committed an offence in the territory of another State shall not be extradited to that State unless otherwise provided in international agreements.
>
> "2. Foreigners and stateless persons who have committed an offence outside the Republic of Kazakhstan and are present in the territory of the Republic of Kazakhstan may be extradited to a foreign State for criminal prosecution or to serve their sentence in accordance with an international agreement with the Republic of Kazakhstan".

33. A person who has committed an offence and is present in the territory of the Republic of Kazakhstan may accordingly be extradited to another State only on the basis of an international agreement that has been concluded.

34. Foreigners and stateless persons may, in the circumstances indicated in article 8, paragraph 2, of the Criminal Code, be extradited to a foreign State. Persons who have been granted political asylum in Kazakhstan may not, however, be extradited. According to article 44 (14) of the Constitution, issues of political asylum are resolved by the Head of State. Decree No. 3057 of the President of the Republic of Kazakhstan dated 15 July 1996 on the granting of political asylum to foreign citizens and stateless persons in the Republic of Kazakhstan states that the Republic of Kazakhstan grants political asylum to persons and members of their family seeking asylum and protection from persecution or because they are in real danger of persecution in the country of their citizenship and/or residence for their socio-political activities, race, nationality or religious beliefs, as well as in cases of human rights violations specified in international legal instruments.

35. According to article 7 of the Criminal Code, citizens, stateless persons and members of the armed forces of the Republic of Kazakhstan are held responsible in accordance with Kazakhstan's criminal legislation for offences committed in the territory of another State. Their punishment may not exceed the maximum provided for by the laws of the State in whose territory the offence was committed.

36. At the present time Kazakhstan resolves issues involving the extradition of offenders on the basis of international agreements. One of the necessary conditions for extradition is the existence of an international treaty with the Republic of Kazakhstan. For example, on 22 January 1993 the States members of the Commonwealth of Independent States concluded a Convention on Judicial Assistance and Judicial Relations in Civil, Family and Criminal Cases.

37. Under article 57 (b) of that Convention, "Extradition shall be refused if, in the territory of the requesting contracting party, an enforceable judgement has been handed down or decision adopted in connection with the same offence to drop proceedings in respect of the person whose extradition is sought".

38. Moreover, under article 80 of this Convention, matters connected with extradition and criminal prosecution are to be discussed between the procurators-general of the contracting parties.

39. In the absence of an international agreement with a particular State, the question of extradition is resolved through the diplomatic channel. In this case, the diplomatic service of the Republic of Kazakhstan will examine the question in the light of information on the use of torture or other cruel, inhuman or degrading treatment or punishment by the person whose extradition is requested by the foreign State.

Article 4

40. The provisions of the Convention against Torture and of the Constitution of the Republic of Kazakhstan have been given effect in the form of a body of legal norms governing criminal responsibility and the punishment of officials and State bodies for the use of torture or other cruel, inhuman or degrading treatment or punishment.

41. Kazakhstan's Criminal Code contains no provisions that specifically establish responsibility for torture. However, it does provide for punishment for the following types of offences:

(a) Coercion to testify (art. 347); (maximum punishment - 8 years' deprivation of liberty);

(b) Subornation or coercion to give false testimony or to evade giving testimony, to present untruthful conclusions or an incorrect translation/interpretation (art. 354) (maximum punishment - 8 years' deprivation of liberty);

(c) Action ultra vires (art. 308) (maximum punishment - 10 years' deprivation of liberty);

(d) Deliberate unlawful detention, pre-trial detention or holding in custody (art. 346) (maximum punishment - 8 years' deprivation of liberty);

(e) Abuse of authority, exceeding powers or failure to act (art. 380) (maximum punishment in peacetime - 10 years' deprivation of liberty; in wartime or in a conflict - up to 20 years or capital punishment);

(f) Systematic or brutal violence (art. 107) (maximum punishment - 7 years' deprivation of liberty);

(g) Unlawful placement in a psychiatric institution (art. 127) (maximum punishment - 7 years' deprivation of liberty).

42. The use of extreme violence, sadism and bullying in the commission of an offence as well as torture of the victim is, under article 54 of the Criminal Code, regarded as an aggravating circumstance from the standpoint of criminal responsibility and punishment.

43. Other kinds of cruel, inhuman or degrading treatment or punishment are punishable under various articles of the Criminal Code as follows: article 125 entitled "Abduction" - deprivation of liberty from 10 to 15 years, with or without confiscation of property; article 126 entitled "Illegal deprivation of liberty" - deprivation of liberty from 5 to 10 years with or without confiscation of property; article 127 entitled "Illegal placement in a psychiatric institution" - deprivation of liberty from 3 to 10 years with or without deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years; article 307

entitled "Abuse of official functions" - deprivation of liberty for up to eight years and deprivation of the right to occupy certain positions or engage in certain activities for a period of up to three years.

44. Complicity is defined in article 23 of the Criminal Code as the intentional joint participation of two or more persons in the deliberate commission of an offence. A clear distinction between the persons participating in the commission of an offence is made in article 28, paragraph 1, of the Criminal Code which defines them as the perpetrator, the person who organizes the crime, the instigator and the accomplice.

45. All the participants (in accordance with articles 107 and 347 of the Criminal Code) are held criminally responsible under the basic article, with reference to article 28 of the Criminal Code, depending on the nature and extent of the participation of each one.

46. Articles 107 and 347 of the Criminal Code establish criminal responsibility for the preparation of an offence, an incompleted offence and for an attempt to commit an offence, with reference to article 24 of the Criminal Code.

47. This concept is refined in article 24 of the Criminal Code as follows:

> "Preparations to commit an offence comprise the intentional acquisition, fabrication or adaptation of the instruments or devices to be used, the search for persons to participate in the commission of the offence, the agreement to commit the offence or any other intentional creation of conditions for the commission of the offence if it was not actually carried out for reasons beyond the control of those concerned.
>
> "By attempt to commit an offence is meant intentional action (or lack of action) to commit an offence, provided that it was not actually carried out for reasons beyond the control of those concerned."

Article 5

48. Article 6 of the Criminal Code of Kazakhstan states that "Any person who commits an offence in the territory of the Republic of Kazakhstan shall be held responsible for his act under this Code." By offence committed in the territory of the Republic of Kazakhstan is meant an act which was initiated or continued or yet was completed in the territory of the Republic of Kazakhstan. The territory of the Republic of Kazakhstan includes the continental shelf, the exclusive economic zone and military aircraft and vessels. Persons who commit an offence on civilian aircraft or vessels registered at a port of the Republic of Kazakhstan but which happen to be outside the Republic also incur criminal responsibility unless otherwise provided in international agreements.

49. According to the Act of 13 January 1993 on the State boundary of Kazakhstan, its national territory includes the land within the State boundary as well as the territorial sea, inland waters and the waters of rivers and other bodies of water, the banks of which are within the territory of the Republic of Kazakhstan.

50. Persons committing offences in the territory of Kazakhstan are held responsible for their acts under the Criminal Code. An offence committed by a group of persons in the territory of a number of States raises the question of establishing Kazakhstan's jurisdiction. If the offence is committed by a number of persons acting in concert they are held responsible for their act under the Criminal Code not only if the organizer, instigator and accomplice acted in the territory of Kazakhstan and the actual perpetrator acted outside its boundaries, but also if the accomplices acted outside its boundaries and the perpetrator acted in the territory of Kazakhstan.

51. The Republic of Kazakhstan also has exclusive jurisdiction over offences committed on its military aircraft or vessels, regardless where they may be. In the case of the armed forces, a Kazakh citizen who commits an offence in an area where military units are stationed outside Kazakhstan incurs criminal responsibility under the Criminal Code for offences committed in his official capacity, military offences, as well as offences against the interests of his country. As a rule, servicemen are held responsible under the laws of the country in which they happen to be for offences of a general criminal nature committed outside the area where military units are stationed.

52. Kazakhstan's criminal legislation is not applicable to persons enjoying diplomatic immunity. Such persons are listed in article 501 of the Code of Criminal Procedure.

53. Foreign nationals who are diplomatic representatives of a foreign State and other persons enjoying immunity who commit an offence in the territory of the Republic of Kazakhstan are held responsible for their act in accordance with the provisions of international instruments.

54. Article 7, paragraph 4, of the Criminal Code states that foreigners who commit an offence outside the Republic of Kazakhstan shall be held responsible for their act if their offence is directed against the interests of the Republic of Kazakhstan, as well as in cases provided for in international treaties signed by Kazakhstan provided that they have not been convicted in another State and are brought to trial in the territory of the Republic of Kazakhstan.

55. According to article 7, paragraph 3, of the Criminal Code, citizens of the Republic of Kazakhstan who have committed an offence outside the Republic are held criminally responsible under this Code if the act they committed is recognized as an offence in the State in whose territory it was committed and if such persons have not been convicted in the other State. Their punishment may not exceed the maximum punishment provided for under the law of the State in whose territory the offence was committed. Stateless persons are held responsible on the same basis. Kazakh citizens are held criminally responsible only if the offence they committed abroad is held to be an offence in the State in whose territory it was committed, if they have not been convicted in the other State and, obviously, if their act is held to be an offence under the criminal legislation of the Republic of Kazakhstan. If it is established that a Kazakh citizen is at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment in the territory of the State in which he committed an offence, he is held responsible for his offence under the criminal legislation of the Republic of Kazakhstan.

56. The legislation of the Republic of Kazakhstan contains no provisions establishing Kazakhstan's jurisdiction in cases where a crime has been committed abroad against the life, health, honour, dignity and other rights and legitimate interests of Kazakh citizens.

Article 6

57. Criminal proceedings, regardless of where an offence was committed in the territory of the Republic, are instituted in accordance with Kazakhstan's legislation on criminal procedure which considerably extends the procedural rights of citizens and guarantees the protection of their rights and the inviolability of the individual. The basic regulatory act governing such matters is the Code of Criminal Procedure of the Republic of Kazakhstan.

58. Article 16 of the country's Constitution states that persons may be arrested and held in custody only in cases provided for by law and only with the sanction of a court or procurator, and that such persons shall be provided with the right to appeal. Without the sanction of a procurator, a person may be held in custody for a period of not more than 72 hours. Article 14 of the Code of Criminal Procedure states that:

> "1. No one may be detained on suspicion of having committed an offence, remanded in custody or deprived of his liberty in any other manner except on the basis of and in accordance with the procedure laid down in this Code.
>
> "2. A person may be arrested and held in custody only in the cases provided for by this Code and only on the order of a court or procurator, and must be granted the right to appeal. He may be detained for a period of not more than 72 hours in the absence of a procurator's sanction. The compulsory placement of a person not being held in custody in a medical establishment for psychiatric examination is permitted only by decision of a court. The compulsory placement of a person not being held in custody in a medical establishment for medical examination is permitted only by decision of a court or with the approval of the procurator.
>
> "3. Any person detained is immediately notified of the reason for his detention as well as the legal description of the offence of which he is suspected or accused.
>
> "4. The court and criminal investigation bodies are required to release any person who is illegally detained, remanded in custody or unlawfully placed in a medical establishment or held in custody for a period exceeding that provided by law or a sentence.
>
> "5. No person participating in criminal proceedings may be subjected to violence or cruel or degrading treatment.
>
> "6. No person may be induced to participate in procedural acts that endanger the life or health of an individual. Procedural acts infringing the inviolability of an individual may be taken against his wishes or his legal representative only in cases and on the basis of the procedure specifically provided for by this Code.
>
> "7. The conditions of detention of a person who has been remanded in custody as a preventive measure as well as of a person who has been detained on suspicion of having committed an offence must be such as to preclude any danger to his life or health.

"8. Any injury caused to a citizen as a result of unlawful deprivation of liberty, detention in conditions endangering his life or health, or brutal treatment shall be compensated in accordance with the procedure laid down in this Code."

59. On 30 March 1999 the President of Kazakhstan signed the Act on procedures and conditions for holding in custody persons suspected or accused of committing an offence. The purpose of this Act, according to its article 1, is to regulate the procedure and specify the conditions for holding in custody persons suspected or accused of committing an offence and to guarantee their rights and legitimate interests.

60. Of particular importance is article 3, which states that "holding in custody must be in accordance with the principles of legality, presumption of innocence, the equality of citizens before the law, humanism and respect for the honour and dignity of the individual according to international law, and must not be accompanied by acts intended to cause physical or mental suffering to the person suspected or accused of committing an offence and being held in custody".

61. Section 2 of the Act deals with the rights of suspects and accused persons and the ways in which they are guaranteed. Judicial assistance may be provided to the investigating bodies and courts of other States with which Kazakhstan has concluded an international judicial assistance agreement, or on the basis of reciprocity, through the procedural action envisaged in Kazakhstan's criminal procedure legislation, as well as through other procedures for which provision is made in the legislation of Kazakhstan and the international agreements to which it is a party. Article 525 of Kazakhstan's Code of Criminal Procedure states that:

"1. The court, procurator, investigator and body conducting an initial inquiry shall, in accordance with established procedure, carry out the instructions received from the competent agencies and officials of other States concerning the conduct of investigations or judicial operations under the general rules of this Code.

"2. The procedural rules of the other State may be followed in giving effect to these instructions if this is provided for in the international agreement between the Republic of Kazakhstan and that State.

"...

"4. With the consent of the official referred to in the first part of article 523 of Kazakhstan's Code of Criminal Procedure, and in cases provided for in an international agreement, a representative of the competent agency of the other State may participate in the execution of these instructions.

"5. If the instructions cannot be carried out, the documents received shall be returned through the Office of the Procurator-General of the Republic of Kazakhstan or the Ministry of Justice of the Republic of Kazakhstan to the foreign agency which made the request together with an indication of the reasons why it could not be acted on. In any event, the request itself is returned if compliance with it might affect the sovereignty or security of the Republic of Kazakhstan or if it is at variance with its legislation."

62. Requests for the extradition of the citizen of another State are covered by article 531 of the Code of Criminal Procedure which states:

> "1. A request for the extradition of a citizen of another State accused of committing an offence or convicted in the territory of another State shall be examined by the Procurator-General of the Republic of Kazakhstan or a duly authorized procurator, whose decision shall form the basis for compliance with the request.
>
> "2. Extradition conditions and procedures are defined in this Code and the international agreement between the Republic of Kazakhstan and the other State ...
>
> "...
>
> "5. The administration of the place where the person is being held in custody is required, on receipt of the extradition decision of the Procurator-General of the Republic of Kazakhstan or a duly authorized procurator, to organize the transfer under guard of the person in question to the appropriate agency of the State to which he is being extradited and to notify the Procurator-General of the Republic of Kazakhstan or the duly authorized procurator that extradition has been effected."

63. If a request presented in due form is received from the competent agency of another State and if there are legitimate grounds for the extradition of the person in question he may be detained and a preventive measure consisting in arrest for extradition purposes adopted. The person may be arrested even before the extradition request has been received if the requesting State so desires.

64. The agencies of the State that has transmitted, or may transmit, a request for extradition or arrest shall be immediately informed when the person in question has been remanded in custody and notified of the proposed time and place of extradition (article 534 of the Code of Criminal Procedure of the Republic of Kazakhstan).

65. The extradition request may be refused under article 532 of the Code of Criminal Procedure if:

> "1. The person in question has been granted political asylum by the Republic of Kazakhstan;
>
> "2. The acts on which the request for extradition is based are not recognized as constituting an offence in the Republic of Kazakhstan;
>
> "3. A sentence which has become effective has already been handed down against the person in question or if the case against him has been dropped;
>
> "4. Criminal proceedings cannot be instituted under the legislation of the Republic of Kazakhstan or a sentence cannot be executed because of extinction of the right of action or for other legitimate reasons;

"5. The extradition request may be refused if the offence in connection with which it is made has been committed either within or outside the territory of the Republic of Kazakhstan and directed against the interests of the Republic of Kazakhstan."

66. Provisions concerning foreigners are contained in article 138 (2) of Kazakhstan's Code of Criminal Procedure:

"1. If the detainee is a citizen of another State, the embassy, consulate or other representative of that State must be notified of the fact in the time specified ...

"2. The person in question may be detained for up to three days even in the absence of the request referred to in the first part of this article if there are legitimate grounds for believing that he committed an offence in the territory of another State entailing extradition ...

"...

"4. If the person being detained in custody has not been extradited within a period of 30 days, the procurator must order his release ...."

67. A detainee is held in custody for extradition purposes by the procurator for a period of up to one month. This period may be extended by the oblast procurator or other procurator at the same level for up to two months. In exceptional circumstances the period of detention for extradition purposes may, at the request of the oblast procurator or other procurator at the same level, be extended by the Procurator-General of the Republic of Kazakhstan or a duly authorized procurator for up to three months (article 534 of the Code of Criminal Procedure of the Republic of Kazakhstan).

Article 7

68. If a request for the extradition of a person to another State is refused on the grounds indicated in article 532 of the Code of Criminal Procedure, the Republic of Kazakhstan initiates criminal proceedings on the basis of the relevant criminal legislation. Article 12 of the Constitution states that "Foreigners and stateless persons in the Republic shall enjoy the rights and freedoms and assume the responsibilities established for citizens unless otherwise stipulated by the Constitution, laws and international treaties".

69. The exercise of the rights and freedoms of the individual and citizen must not violate the rights and freedoms of other persons or affect the constitutional system and public morals.

70. Article 21 of the Code of Criminal Procedure states that justice is administered on the basis of the equality of all before the law and the courts. No person may, in the course of criminal proceedings, be subjected to any form of discrimination on grounds of origin, social, occupational and property status, race, sex, nationality, language, attitude towards religion, convictions, place of residence or any other circumstance (article 6 of the Act on procedures and conditions for holding in custody persons suspected or accused of committing an offence).

71. According to article 24 of Kazakhstan's Code of Criminal Procedure, the court, procurator and person conducting an initial inquiry are required to take all the measures provided for by law in conducting a comprehensive, complete and objective investigation of all the facts needed for the proper elucidation of the case.

72. Kazakhstan's criminal legislation does not directly establish responsibility for torture as a separate offence. However, in article 107, entitled "Brutal or systematic violence", and article 347, entitled "Coercion to testify", the Criminal Code states that the use of torture is an aggravating circumstance.

73. Under article 139 of the Code of Criminal Procedure preventive measures can be adopted if there are sufficient grounds for assuming that a suspect is trying to elude the preliminary inquiry and the courts or hampering an objective investigation and judicial proceedings or that he will continue his criminal activities. Such preventive measures include:

(a) An undertaking to behave in an appropriate manner and not to change his address without permission;

(b) Personal guarantee;

(c) Placing a serviceman under the supervision of the commander of a military unit;

(d) Placing a minor under supervision;

(e) Bail;

(f) House arrest;

(g) Arrest.

74. Article 153 of the Code of Criminal Procedure states that a person may not be held in pre-trial detention for more than two months. If it is impossible to complete the investigation in time and in the absence of grounds for modifying or rescinding a preventive measure of this nature, this period may be extended at the investigator's substantiated request by a district or municipal procurator or military or other procurator at the same level up to three months and by oblast procurators or military or other procurators at the same level up to six months. The extension of this period up to nine months may be ordered by the Deputy Procurator-General or the Chief Military Procurator only if the case proves to be particularly complex, at the substantiated request of the chief of the investigative division and endorsed by the oblast procurator or other procurator at the same level. The period of pre-trial detention constituting a preventive measure may be extended up to 12 months by the Procurator-General of the Republic of Kazakhstan. Further extensions of this period are prohibited and the detained suspect must be released immediately.

75. Chapter 2 of Kazakhstan's Act on procedures and conditions for holding in custody persons suspected or accused of committing an offence deals exclusively with suspects and accused persons, whose rights it guarantees. This Act for the first time set out the various rights

of such persons which were previously not embodied in Kazakhstan's legislation. These rights include: the right to obtain from the administration of the place where a person is being held in custody information about the custodial regime and disciplinary requirements; the right to courteous behaviour on the part of the staff of places of detention; and the right to attend religious services and to possess articles used in religious ceremonies.

76. The Act has also extended the right of suspects and accused persons to visits from relatives and other persons, to receive mail and parcels, and to acquire foodstuffs and basic necessities.

77. Their right to meetings with defence counsel, relatives and other persons is set out in detail in article 17 of the Act, which states that suspects and accused persons, from the moment of their detention, have the right to private and confidential meetings with defence counsel. The number and duration of such meetings is unlimited.

78. Meetings with relatives and other persons are supervised by the staff of the place of detention but are immediately ended if an attempt is made to provide the suspect or accused person with prohibited articles, substances and foodstuffs or information that might hamper the establishment of the facts in criminal proceedings or be used in the commission of an offence.

79. Under article 26 of the Act, accused persons may, in appropriate circumstances, in accordance with the regulations and at their request, be allowed to work in the remand centre and receive appropriate wages after deduction of various items specified by the law.

80. If persons held in a remand centre fail to comply with the rules laid down, the administration of the centre applies the disciplinary measures provided for in article 37 of the Act on procedures and conditions for holding in custody persons suspected or accused of committing an offence: reprimand; placement in a punishment cell or solitary confinement cell for a period of up to seven days. Other restrictions not specified in article 39 of this Act in respect of suspects and accused persons placed in a punishment or solitary confinement cell are not permitted.

81. Grounds for imposition of special measures and the use of force by the staff of the remand centre against suspects and accused persons are described in detail in articles 43 and 44 of the Act. This list and the possible circumstances in which special measures or force may be used against suspects and accused persons in remand centres are exhaustive.

82. The release of suspects and accused persons from remand centres takes place by decision of the investigator, the person conducting an initial inquiry, the procurator or the judge, on the basis of a court order or by decision of the head of the administration of the remand centre when the period of detention laid down by Kazakhstan's legislation comes to an end.

83. Under Kazakhstan's Code of Criminal Procedure, persons who have been convicted by a court have the right to appeal to a court of second instance within a period of 10 days from the time the verdict was handed down; persons who have been convicted and are being held in custody may do so from the day they receive a copy of the verdict. Complaints and protests submitted after this time are not considered. If the time limit laid down is exceeded for

valid reasons, persons entitled to submit a complaint or protest may appeal to the court for reinstatement of the period laid down (articles 399 and 400 of the Code of Criminal Procedure).

Article 8

84. The bilateral agreements dealing with extradition matters concluded by the Republic of Kazakhstan with other States do not contain a list of extraditable offences. The various offences entailing extradition are determined by the nature of the punishment which may be imposed by a court for their commission. As a rule, such punishment is deprivation of liberty for a period of over one year or of a more severe nature.

85. Agreements on judicial assistance and judicial relations in civil, family and criminal proceedings which govern extradition procedures have, for example, been concluded with Uzbekistan, Mongolia, Turkmenistan, Azerbaijan, Lithuania, Georgia, Kyrgyzstan, Turkey, Korea, Pakistan and China. Extradition procedures are also governed by the Minsk Convention of 22 January 1993 of the Commonwealth of Independent States on judicial assistance and judicial relations in civil, family and criminal proceedings. Accordingly, the offences covered by articles 107 and 347 of Kazakhstan's Criminal Code fall under the heading of articles under which offenders may be extradited.

86. So far, there has not been a single case in which the provisions of the above agreements have been applied on the basis of this article, since no request has been ever made for the extradition of a person accused of torture.

87. Should another State party to the Convention against Torture request the extradition of an offender, and in the absence of an agreement with that State, the matter would be settled through the diplomatic channel in accordance with article 8, paragraph 2, of the Convention.

Article 9

88. Article 521 of Kazakhstan's Code of Criminal Procedure states that:

> "Judicial assistance may be provided to the investigating bodies and courts of other States with which the Republic of Kazakhstan has concluded an international judicial assistance agreement, or on the basis of reciprocity, through the procedural action envisaged in this Code, as well as through other procedures for which provision is made in other laws of and international agreements entered into by the Republic of Kazakhstan;
>
> "2. If the provisions of the international agreement ratified by the Republic of Kazakhstan are at variance with those of this Code, the provisions of the international agreement shall be applied;
>
> "3. The expenditure incurred in providing judicial assistance shall be borne by the agency to which the request is addressed in the territory of its State unless otherwise provided in international agreements with the Republic of Kazakhstan."

89. Procedural documents compiled in the territory of the requesting State in accordance with the legislation in force in that territory and bearing the State seal shall be accepted as procedural documents without any restriction unless otherwise provided in the international agreement with the Republic of Kazakhstan.

90. In accordance with article 524 (1) of the Code of Criminal Procedure:

"Instructions to take investigative or judicial action must be drawn up in writing and signed by the official communicating the instructions, bear the seal of the agency and indicate:

"1. The name of the body issuing the instructions;

"2. The name and address of the body to which the instructions are being sent;

"3. The name of the case and nature of the instructions;

"4. Information concerning the persons in respect of whom the instructions are being issued, their citizenship, occupation, place of residence or temporary residence and, in the case of legal persons, their name and address;

"5. An account of the circumstances to be elucidated as well as a list of the documents and the material and other types of evidence requested;

"6. Information about the circumstances in which the offence was committed and its nature and, if necessary, information about the injury caused by the act in question;

"7. Other information needed in order to comply with the instructions."

91. As a rule, the Republic of Kazakhstan assumes the following obligations in concluding an international agreement on criminal matters:

(a) A search for offenders and persons attempting to elude an investigation, the courts or a sentence;

(b) Exchanges of police investigative, reference and criminal information about the preparation of offences and persons participating in such preparations;

(c) The detention and remand in custody of persons to be extradited in connection with the commission of an offence.

92. Article 536 of Kazakhstan's Code of Criminal Procedure states that the instruments used in the commission of the offence as well as articles bearing traces of the offence or acquired in an unlawful manner are also to be handed over when a person is extradited to another State.

93. These articles are handed over on request even if the person in question cannot be extradited because he has died or for other reasons. In order to protect the legitimate rights of third parties, such articles are handed over only when the agency of the other State guarantees their return at the end of the proceedings.

Article 10

94. At the time Kazakhstan ratified the Convention it had no specific education and training programme aimed at preventing use of torture for law enforcement personnel, either civil or military, medical personnel, public officials and other persons. Forensic medical establishments are responsible for determining whether bodily injuries have been caused by torture. However, their work is limited to determining the presence of such injuries and their severity, and not their origin.

95. Kazakhstan's Code of Criminal Procedure, Criminal Code and Code for the Execution of Criminal Penalties set out the procedure to be followed in dealing with persons participating in criminal proceedings and serving sentences in penitentiary establishments. The provisions of these regulatory acts prohibit cruel, inhuman or degrading treatment by members of law enforcement bodies, who are required to act in a courteous manner not only towards participants in criminal proceedings but also persons serving a sentence in the corrective establishments of Kazakhstan. The obligations of the administrative body responsible for the execution of punishment are set out in detail in respect of each form of punishment; incentives and penalties; and the legal position of State bodies and public institutes participating in the execution of criminal penalties (chapter 5-24 of the Code for the Execution of Criminal Penalties).

96. A broader measure of assistance from international institutes and organizations could play an important role in the successful resolution of the problems raised by this article of the Convention.

97. Students studying law at State higher educational establishments as well as students attending the schools of the Ministry of Internal Affairs and studying legal practice, such as detention in custody and the questioning and treatment of persons who have been arrested or detained, are required to study the constitutional rights of citizens and the provisions of the Universal Declaration of Human Rights.

98. All training programmes emphasize the need for the humane and considerate treatment of each individual and to ensure that whatever action is taken is in conformity with the law. These matters are studied in greater depth in courses on criminal law, criminal proceedings, criminology, administrative law and scientific criminal investigation techniques.

Article 11

99. Article 14, paragraphs 5, 6 and 7, of the Code of Criminal Procedure state that no persons participating in criminal proceedings may be subjected to violence or cruel or degrading treatment. No one may be induced to participate in procedural acts likely to endanger the life or health of an individual. The detention of a person who has been arrested as a preventive measure as well as that of a person detained on suspicion of having committed an offence must take

place in conditions that do not endanger his life or health. Consequently, a participant in criminal proceedings may not be subjected to any form of coercion in the course of the investigation except in cases specifically provided for by law (use of special methods, force, etc.).

100. Moreover, the legal status of suspects and accused persons detained in remand centres is governed by Kazakhstan's Act of 30 March 1999 on procedures and conditions for holding in custody persons suspected or accused of committing a crime. Their legal position is defined in chapter 2 of the Act which sets out the rights of persons suspected or accused of committing an offence. Reflecting the provisions of the Convention, the Act sets forth various rights, such as the right to courteous behaviour by the staff of the remand centre, the right to receive letters and parcels, the right to private and confidential meetings with counsel, with representatives of trade unions and other voluntary associations acting as defence counsel, and with relatives and other persons participating in the case as counsel.

101. Particular attention is drawn to the right of suspects and accused persons to their personal safety.

102. Article 18 of the Act states that, in the event of a threat against the life or health of a suspect or accused person or the likelihood of an offence being committed against other suspects or accused persons, the staff of the remand centre are required to take immediate steps to ensure the personal safety of the suspect or accused person at risk.

103. In addition, suspects or accused persons whose rights have been violated in remand centres may submit complaints, applications and proposals in writing or verbally to State bodies, the courts, the procurator, local self-government bodies, voluntary associations and the media. Complaints and applications addressed to a court or procurator are not censured (article 20 of the Act). Improved living conditions have been created for pregnant women and women with children who receive specialized medical care, better food and creature comforts, as required by the Government. They may not be penalized by being placed in a punishment cell (article 29 of the Act).

104. Improved living conditions and better food, as determined by the Government, have similarly been provided for minors suspected or accused of committing an offence. They are also entitled to daily walks (of no less than two hours) and to watch films (circumstances permitting) and television and premises are being equipped for sports purposes (article 30 of the Act).

105. In accordance with Kazakhstan's new Code for the Execution of Criminal Penalties, the rights and freedoms of persons who have been convicted and are serving their sentence in corrective establishments have been extended. In addition to their right to receive mail and printed matter and to listen to the radio, all categories of convicted persons have been granted the right to use the telephone.

106. In accordance with article 12 of the Code for the Execution of Criminal Penalties, convicted persons have been guaranteed the right to practise their religion (virtually all corrective establishments have their own prayer rooms and mosques).

107. Since the entry into force on 1 January 1998 of the new Code for the Execution of Criminal Penalties a distinction has been made between the conditions in which various categories of convicted persons are held (normal, relaxed, rigorous and privileged).

108. Following the entry into force on 1 January 1998 of the new Criminal Code, all categories of convicted persons, depending on the seriousness of their offence, are eligible for parole after serving 1/2, 1/3, 2/3 or 3/4 of their sentence.

109. Various types of penalties such as deprivation of the right to receive mail or printed matter, to listen to the radio and to receive visits, set out in the Corrective Labour Code of the Kazakh SSR, have been abolished.

110. Convicted persons held in privileged conditions may be authorized by the head of the corrective establishment to live in special accommodation under supervision outside the corrective colony.

111. Convicted persons held in a corrective establishment are entitled to 12 working days of paid release from work per year.

112. Convicted persons held in corrective establishments may be authorized to leave their establishment short term, for a period not exceeding seven days for purely personal reasons (the death or serious illness of a close relative), or long term, for the period of annual paid release from work.

113. Depending on their behaviour, convicted juveniles serve their sentences in different conditions, namely, normal, privileged or rigorous (under previous corrective labour legislation, juveniles could live in ordinary lodgings). On the basis of article 130 of the Code for the Execution of Criminal Penalties, the following incentives are now offered to juveniles depending on their conduct, conscientious attitude to their studies, active participation in the activities of amateur organizations and in educational measures:

(a) The right to attend cultural spectacles and sporting events outside the educational colony but accompanied by staff of the colony;

(b) The right to leave the colony accompanied by parents or other close relatives (previous corrective labour legislation did not offer incentives of this nature).

114. The number of privileges that can be granted to convicted juveniles has been increased. They include:

(a) Minors held under relaxed conditions have the right to 12 short and 4 long visits. Long visits with parents can take place outside the colony (under the corrective labour legislation of the Kazakh SSR convicted juveniles were allowed 6 short visits a year; no provision was made for long visits);

(b) They are entitled to receive 12 items of mail or parcels and 12 items of printed matter during the year (under previous legislation they were allowed 6 items of mail or parcels and not more than 2 items of printed matter a year);

(c) Each month they have the right to spend 10 monthly notional accounting units out of their personal accounts for the purchase of foodstuffs and basic necessities (under previous corrective labour legislation they were allowed to spend 7 roubles per month out of their personal account for the purchase of basic necessities and products; convicted juveniles living under improved conditions of detention were allowed to spend an additional 3 roubles a month for this purpose);

(d) Convicted juveniles are guaranteed freedom of conscience and religion. Attendance at religious services is voluntary (previous legislation contained no provision of this kind);

(e) Telephone conversations with relatives are permitted (under previous legislation communication with relatives was by letter);

(f) Juveniles are allowed to leave the re-education colony for strictly personal reasons, accompanied by a relative or another person (under previous legislation they were not allowed to leave the colony);

(g) Under article 129 of the Code for the Execution of Criminal Penalties, convicted juveniles serving a sentence under privileged conditions are allowed to live in lodgings outside the colony without guards; they may also, without any restriction, use money; receive letters, parcels and printed matter; receive short visits. They are entitled to 6 long visits a year, and given the possibility of living outside the colony and wearing civilian clothing and footwear (this privilege was not granted under previous legislation).

115. Under Kazakhstan's Code for the Execution of Criminal Penalties, the main ways in which convicted persons are reformed are through re-educational work; socially useful labour; acquisition of a secondary education; vocational training and public pressure (article 7, paragraph 2, of the Code for the Execution of Criminal Penalties).

Article 12

116. Kazakhstan's legislation states that the purpose of criminal proceedings is the prompt and complete elucidation of a crime, the identification and prosecution of the guilty parties, fair judicial proceedings and the proper application of criminal legislation.

117. Criminal proceedings as defined by law must provide protection against unjustified accusation and conviction and against any restriction of the rights and freedoms of the individual and citizen and, in the event that an innocent person is wrongly accused or convicted, must ensure his immediate and complete rehabilitation; they should also serve to strengthen law and order and the rule of law, prevent crime and inculcate respect for the law.

118. The court, procurator, investigator and person conducting an initial inquiry are required to take all the measures provided for by law with a view to the comprehensive, complete and objective investigation of the circumstances necessary for the proper processing of the case.

119. The Code of Criminal Procedure lays down the procedure to be followed in initiating and conducting criminal proceedings. As has already been noted, the basic principles involved must be strictly complied with since the objective and impartial hearing of a criminal case depends on them as well as on the Office of the Procurator, which monitors criminal proceedings at all stages.

120. In describing the role and position occupied by the Office of the Procurator in the country's system of law enforcement agencies, it may be noted that it is the only body which, in a direct manner, ensures the strict and uniform application of laws, the decrees of the President of the Republic, as well as other laws and regulations in the territory of the Republic. The problem has arisen of finding a legislative solution to the question of vesting the Procurator with procedural rights, not only in respect of criminal prosecution but also conduct of criminal proceedings initiated by the Procurator himself.

121. This problem arises, for example, in the investigation of criminal cases involving the staff of internal affairs bodies and corrective establishments who permitted the violation of the rights and freedoms of citizens. Investigators and the heads of internal affairs bodies having in-house interests at heart and wishing to protect the "honour of the regiment" are at times not interested in bringing a case to its conclusion and in the conviction of the guilty parties by the court. This may happen in a variety of ways, which include superficial inspection of the place of the incident, failure to take proper note of traces of a crime, the destruction of clues and material evidence, intimidation of the victims and forcing them to repudiate their testimony. In such cases, the Procurator, in the absence of conclusive proof, is obliged to agree that proceedings should be dropped.

122. The problem of having the Procurator exercise proper supervision over the legal execution of penalties in the corrective establishments of the Ministry of Internal Affairs arose following the rationalization of government bodies and, on this basis, reductions in February this year in the staff of all nine specialized procurator's offices in oblasts where a large number of establishments were located. At the present time corrective establishments are supervised to the same extent but with fewer staff. Apart from articles 107 and 347 of the Criminal Code, already referred to, officials are often punished under articles referring specifically to the use of torture or systematic or brutal violence, namely, article 106, entitled "Battery", article 307, entitled "Abuse of official functions", article 308, entitled "Action ultra vires", and article 316, entitled "Negligence", of the Criminal Code, as well as article 346, entitled "Deliberate unlawful detention, pre-trial detention or holding in custody". These articles, reflecting the provisions of articles 1 and 12 of the Convention, can be applied, for example, when an official inflicts mental pain or suffering on a victim; alternatively, they can be applied in conjunction with articles 107 and 347 of the Criminal Code.

Article 13

123. Under the Constitution, everyone in the Republic of Kazakhstan has the right to judicial protection of his rights and freedoms. Any person whose rights have been violated or unlawfully restricted is entitled to appeal to State administrative bodies, law enforcement agencies, judicial bodies and the Procurator's Office for the protection of his legitimate rights and freedoms.

124. When a citizen appeals to a law enforcement agency, his applications, complaints and proposals are examined within one month of the day on which they are received; those not requiring additional consideration and verification are considered without delay, and within 15 days at the most.

125. In cases where an application or complaint requires special verification, entails requests for additional information or the adoption of other measures, the time limit for their consideration may be extended by the head of the internal affairs agency or his deputy but not for more than one month, and the person submitting the application or complaint is notified accordingly.

126. Under article 10 of the Code for the Execution of Criminal Penalties, convicted persons have the right to submit oral and written proposals, applications and complaints to the administration of the establishment or agency executing the penalty, to the higher administrative bodies of establishments and agencies executing the penalty, to a court, the subordinate bodies of the Procurator's Office, other State bodies, voluntary associations, and to international organizations responsible for the protection of human rights and freedoms.

127. In accordance with article 99 of the Code of Criminal Procedure, the body in charge of criminal proceedings is required to take steps to ensure the safety of the persons involved, such as the victims, witnesses, the accused, as well as other persons and members of their families if there is a real danger that they might be subjected to violence or other acts prohibited by criminal legislation. The body in charge of the proceedings is required to take steps to ensure the safety of the above persons on the basis of their oral (written) declaration or its own initiative, and accordingly makes the necessary arrangements.

128. In accordance with article 100 of the Code of Criminal Procedure, the following procedural measures are taken to ensure the safety of witnesses, suspects, persons accused and other persons involved in criminal proceedings, the members of their families and close relatives:

(a) The issuance by the body in charge of the criminal proceedings of an official warning to the person threatening to do violence or engage in other acts prohibited by criminal legislation that he could be held criminally responsible for such acts;

(b) Restriction of access to information about a protected person;

(c) Measures ensuring his personal safety;

(d) The adoption of preventive measures in respect of the accused (suspect) precluding the possibility of his using (preparing to use) violence against persons involved in the criminal proceedings or engaging (making preparations to engage) in other criminal acts.

129. In order to ensure the safety of persons involved in criminal proceedings, the person in charge of them may hold closed court hearings. He is entitled to forbid the use of video or sound recordings as well as other means of recording cross-examinations and have the accused and defence counsel removed from the courtroom.

Article 14

130. Under Kazakhstan's criminal procedure legislation, a person acquitted by a court, as well as an accused person (suspect) in respect of whom the criminal investigation body has decided to drop criminal proceedings on the basis of evidence precluding criminal prosecution, is regarded as innocent and his rights and freedoms guaranteed by the Constitution cannot in any way be restricted.

131. The court and criminal prosecution bodies are required to take all the measures laid down by law to rehabilitate such persons and to provide compensation for any injury caused as a result of unlawful acts by the body in charge of the criminal proceedings (article 39 of the Code of Criminal Procedure).

132. The injury caused to a person as a result of unlawful detention, arrest, house arrest, temporary absence from his job, placement in a special medical establishment, conviction and the use of coercive measures of a medical nature is compensated in full from the State budget, regardless of the fault committed by the body in charge of the criminal proceedings (article 40 (1) of the Code of Criminal Procedure).

133. Once the body in charge of the criminal proceedings has adopted a decision to rehabilitate the person in question it is required to make an official apology for the injury he suffered (article 44 of the Code of Criminal Procedure).

134. In the event of the death of the person concerned, the right to compensation in accordance with established procedure passes to his successor and, in the case of pensions and allowances whose payment was suspended, to those members of his family comprising the group of persons entitled to benefits in the event of the breadwinner's death (article 40 (3) of the Code of Criminal Procedure).

135. The persons mentioned in article 40 (2) and (3) of the Code of Criminal Procedure are entitled to full compensation for material damages and moral injuries, and to the restoration of employment, pension, housing and other rights. If the rehabilitation or compensation requirement is not complied with or if the person is not satisfied with the decision adopted, he is entitled to appeal to a court in accordance with the procedure prescribed by civil law (article 47 of the Code of Criminal Procedure).

Article 15

136. Paragraph 3 (9) of article 77 of the Constitution states that "evidence obtained by illegal means shall have no juridical force. No person may be sentenced on the basis of his own admission of guilt".

137. No person involved in a criminal proceeding may be subjected to coercion or brutal or degrading treatment (article 14 (5) of the Code of Criminal Procedure).

138. Kazakhstan's Criminal Code states that the coercion of a suspect, accused person, victim or witness to give testimony or of an expert to present his conclusions by means of threats, blackmail or other unlawful acts on the part of the investigator or person conducting the initial inquiry and accompanied by the use of force, bullying or torture is punishable by deprivation of liberty for a period of from three to eight years.

139. Evidence obtained in violation of the law is therefore regarded as being legally invalid and cannot be used as a basis for prosecution or as proof in any other connection.

140. Factual information obtained by means of the violations referred to in the first part of this article may be used as evidence of the violations committed by and the culpability of the persons who acquiesced in them (article 116 of the Code of Criminal Procedure).

Article 16

141. Kazakhstan's legislation states that members of law enforcement agencies who subject persons involved in criminal proceedings to torture with a view to obtaining evidence shall be held responsible for their acts. The corresponding provisions in the Criminal Code are article 107, entitled "Coercion", and article 347, entitled "Coercion to obtain evidence".

142. The provisions of Kazakhstan's Criminal Code under which persons are held criminally responsible for the use of other forms of cruel, inhuman or degrading treatment or punishment are contained in articles 125, entitled "Abduction", punishable by deprivation of liberty for a period of from 10 to 15 years, with or without confiscation of property; 126, entitled "Illegal deprivation of liberty", punishable by deprivation of liberty for a period of from 5 to 10 years, with or without confiscation of property; 127, entitled "Unlawful placement in a psychiatric institution", punishable by deprivation of liberty for a period of from 3 to 7 years, with or without deprivation of the right to occupy certain positions or engage in certain activities for a period of up to 3 years; and 307, entitled "Abuse of official functions", punishable by deprivation of liberty for a period of up to 8 years and deprivation of the right to occupy certain positions or engage in certain activities for a period of up to 3 years.

143. In accordance with article 106, entitled "Battery", of the Criminal Code, battery or other violent acts inflicting physical pain but not having any after-effects covered by article 105 of this Code are punishable by a fine in the amount of up to 100 notional accounting units or salary or other income of the person convicted for a period of up to one month, by the performance of social work for up to 180 hours or corrective work for up to six months, or by detention for one month.

144. Based on the interpretation of the Commentary, battery consists in inflicting repeated blows with the fists, feet or hard blunt instruments on the body of the victim, thereby causing him physical suffering but not damaging the anatomical integrity of tissues and the normal functioning of organs, but causing minor health disorders lasting a short time (not more than six days). Other violent acts causing physical pain are interpreted as anything inflicted on the victim's body, apart from blows and battery, such as pinching, cutting, twisting of the hands, the tearing out of hair and the use of biological agents. In such cases the members of law enforcement agencies are held responsible, regardless of whether they personally committed the offence or were accomplices.

III. INFORMATION ABOUT SPECIFIC CASES

145. A review of cases of the violation of the constitutional rights and freedoms of citizens during the period under consideration revealed that a large number of such violations involving brutal and other unlawful forms of treatment and punishment had occurred. Specific typical violations of the provisions of the Convention against Torture that occurred in the Republic of Kazakhstan are described below.

146. On 15 February 1999 the Procurator of the Ayaguz district of East Kazakhstan oblast instituted criminal proceedings against S. Tashmetov, a member of the staff of the municipal Internal Affairs Department's Detention Centre who, exceeding his official powers and without any justification, placed the juvenile M. Otelenov in the Detention Centre where he inflicted minor physical injuries on him. On 7 April 1999 the Ayaguz district court sentenced S. Tashmetov to two years' deprivation of liberty - one of which was suspended - under article 63 of the Criminal Code.

147. On 29 September 1999 a court found I. Erdibek and A. Novruz, Chief and detective officer respectively of the criminal investigation division of the municipal Internal Affairs Department of the town of Zhanaozen, Mangistaus oblast, guilty under article 308 (1) and article 347 (2) of the Criminal Code. On 4 May they had taken B. Esenamanov to the municipal Internal Affairs Department and, without completing a detention deposition, unlawfully detained him in its offices for a period of two days and by violent means got him to confess that he had committed theft.

148. On 10 June 1999, the procurator of the Kurchum district of East Kazakhstan oblast instituted criminal proceedings under articles 308 (1) and 347 (2) of the Criminal Code against E. Okasov, first deputy chief of the Kurchum district Internal Affairs Department who, on 7 June 1999, acted ultra vires in the course of questioning the suspect M. Kaliev, using physical violence and, in order to obtain a confession, searing his body with a metal object.

149. Criminal proceedings were instituted under article 308 (1) of the Criminal Code against B. Tazhibaev, head of unit, and A. Shyganakov, detective officer, attached to the UG-157/9 bureau of the corrective system administration of the Internal Affairs Department of Atyrao oblast who, on 26 February 1999, acted ultra vires and beat K. Kunbaev, M. Sariev, T. Zharmagambetov, T. Niyazgaliev and A. Ospanov with clubs because they refused to strip. These persons suffered bodily injuries of various kinds as a result of their beating. By way of

protesting against these unlawful acts, 28 convicts performed acts of self-mutilation, cutting their abdominal cavities with razor blades. A. Shyganakov and B. Tazhibaev were given a suspended sentence of two years' deprivation of liberty. On the order of the head of the Internal Affairs Department the two staff members were dismissed from their posts. This unusual incident was looked into by the procurators of the oblast with the participation of the Procurator-General of the Republic of Kazakhstan and as a result the chief of the establishment was dismissed.

150. The following case, which was given broad coverage by the media, is one of several that are receiving close attention by the country's law enforcement bodies.

151. The investigative department of the National Security Committee of Kazakhstan in the town of Astana investigated a criminal case with a view to bringing charges against K.G. Temirov, head of the criminal investigation division of the Almaty Internal Affairs Department of Astana; S.K. Seilov, deputy chief of the criminal investigation division of the Astana Internal Affairs Department; B.A. Sapargaliev, senior detective officer of the bureau for the investigation of offences against the individual (criminal investigation division of the health control unit of the Astana Internal Affairs Department); A.T. Dosmukhanov and G.E. Shukeev, detective officers of the criminal investigation division of the Almaty Internal Affairs Department of the town of Astana; T.R. Shalbaev, detective officer of the criminal investigation division of the Astana Internal Affairs Department; and N.N. Salybekov, inspector attached to the juvenile affairs inspectorate of the Almaty Internal Affairs Department of Astana, for having committed offences covered by articles 308 (Action ultra vires), 346 (Deliberate unlawful detention, pre-trial detention or holding in custody) and 347 (Coercion to obtain testimony) of the Criminal Code.

152. It was established in the course of the preliminary investigation that on 31 May 1998, V.N. Zemblevsky, who was being held in custody in an Internal Affairs Department holding facility for committing minor administrative offences, was taken to the Astana district Internal Affairs Department where Seilov, Temirov and Sapargaliev, without sufficient justification, said they suspected him of killing Krivtsov and demanded that he confess to the crime. When he refused, Temirov and Sapargaliev, acting on the orders of Seilov, handcuffed and gagged him and began to beat him with their fists and a stick. Later on, Zemblevsky was beaten up on a number of occasions by Temirov and Shalaev. During the night of 3 June 1998, Salybekov, a student from the Aqmola law school who had been sent for training with the Almaty district Internal Affairs Department, acting on the orders of the staff of the criminal investigation division, went to where Zemblevsky was being held and did not allow him to sleep, making him stand on one foot for long periods of time and, when he became tired, beat him. As a result of these unlawful acts on the part of members of the police, Zemblevsky suffered extensive bodily injuries.

153. In June 1998, in the course of investigations aimed at elucidating the murder of A. Bekov, Mr. and Mrs. Gilfanov, who were neighbours of the victim, were unlawfully arrested and detained in the premises of the Almaty district Internal Affairs Department. Seeking a confession, the police officers, after threatening to use violence against them and members of their families, beat them up. Mrs. Gilfanov was also subjected to sexual taunts.

154. Furthermore, on 14 June 1998, Shukeev and Temirov beat up Yusupov, who was suspected of assault with intent to rob, in the premises of the Almaty district Internal Affairs Department.

155. The Almaty District Court in the town of Astana, after hearing the criminal case in open court, found the following guilty:

(a) K.G. Temirbekov, of committing offences covered by articles 308 (1), 347 (2) and 346 (1), and sentenced him to four years' deprivation of liberty;

(b) S.K. Seilov, of committing offences covered by articles 308 (1), 347 (2) and 346 (1), and sentenced him to three years and six months' deprivation of liberty;

(c) B.A. Sapargaliev, A.T. Dosmukhanov and G.E. Shukeev, of committing offences covered by articles 308 (1) and 347 (2), and sentenced them all to three years and six months' deprivation of liberty;

(d) T.R. Shalbaev, of committing offences covered by article 308 (1), and sentenced him to one year's deprivation of liberty; he was not required to serve his sentence as a result of an amnesty act;

(e) N.N. Sadybekov, of committing offences covered by article 107 (2 (a)) (Coercion), and sentenced him to three years' deprivation of liberty with a probationary period after one year. He was not required to serve his sentence as a result of an amnesty act.

A paper on the harmonization of Kazakhstan's legislation with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prepared by Mr. Bill Bowring (United Kingdom) (expert, Joint Office for Democratic Institutions and Human Rights/European Commission Programme for Advancing Human Rights and Democratization in Central Asia) is appended to the present report. Mr. Bill Bowring was invited by the Human Rights Commission attached to the Office of the President of the Republic of Kazakhstan to provide methodological assistance in the preparation of the report.